IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4224 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI MAGANBHAI TURI

Versus

DIST SUPDT OF POLICE

Appearance:

MR KB PUJARA for Petitioners No. 1-11

Ms.Gajjar, Assistant GOVERNMENT PLEADER,

for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/12/2001

ORAL JUDGEMENT

The names of the present petitioners were sent through Employment Exchange for selection for the post of Armed Police Constable. The petitioners received interview call letters and after necessary physical test, etc., they were selected for the aforesaid post. As per the averments in the petition, 185 candidates were selected, out of which 100 candidates were issued appointment orders and the rest were kept in the waiting

list. The petitioners were kept in the waiting list. It is averred in the petition that the department operated the said waiting list upto serial No.15 and thereafter, rest of the candidates in the waiting list from serial No.16 to 85 were waiting for their turn. Since the Department thereafter did not operate the said waiting list, on the ground that the life of that waiting list is over, having lived its life of one year, no further appointments were made from the said waiting list. The petitioners, therefore, challenged the aforesaid action of the Government in not operating the said waiting list by filing the present Special Civil Application. It is averred in paragraph 4 that the action of the respondents in treating the said list as having expired after a period of one year is illegal, arbitrary and discriminatory. In paragraph 5 of the petition, the petitioners have given example of one Arvindbhai Jeshingbhai Barot, who, according to the petitioners, was selected and placed in the waiting list in June, 1987 and he was subsequently appointed even after the expiry of the period of one year. Under the aforesaid circumstances, the petitioners have challenged the aforesaid action of the respondents. It is prayed in the petition that the respondents may be restrained permanently from treating the waiting list of Armed Police Constable prepared by them in June, 1989 as lapsed after a period of one year unless and until the petitioners and all other candidates on the said waiting list are given appointment order.

On behalf of the respondent, affidavit-in-reply has been filed at page 8. Relevant averments in the affidavit-in-reply in paragraphs 5 and 6 are as under :-

> " ... ...
>
> 5. As Armed Police Constables were to be appointed in Sabarkantha District, after interviewing several candidates including the petitioners, waiting list was prepared by the respondent for appointment to the post of Armed Police Constables. It is submitted that normally, waiting list of more persons is prepared because very often persons selected for the post do not accept their appointments and therefore size of waiting list is always more. It is submitted that from the waiting list prepared by the respondent, persons who were upto Sl. No. 1 to 8 were offered appointment to the post of Armed Police

Constables. It is submitted that the petitioners are admittedly at Sl. Nos. 12 and 20 respectively and therefore the petitioners were not appointed as Armed Police Constables. I reiterate that no person whose name is below the name of the petitioners in the said waiting list has been appointed as Armed Police Constables.

6. It is submitted that a waiting list prepared for the purpose of giving appointment to the post of Police Constables remains in force for a period of one year from the date of its preparation. It is submitted that the said policy has been laid down by the State of Gujarat in Home Department under its Circular dated 5th June 1982 and the said Circular is being followed scrupulously. A copy of the said circular is annexed and marked as Annexure - I to this affidavit in reply. It is submitted that the petitioners and other candidates were interviewed for selection to the post of Armed Police Constables from 14th to 17th June, 1989. In the circumstances, it is submitted that the waiting list prepared by the respondent wherein names of the petitioners have been included has already been expired. It is submitted that the validity of the above referred circular dated 5th June 1982 was challenged in Special C.A. No.1623 of 1989. This Hon'ble Court was pleased to reject the said petition by upholding the validity of the above referred circular issued by the Government. It is therefore submitted that by virtue of circular dated 5th June 1982, the waiting list in question has expired and, therefore, the petitioners cannot be appointed as Armed Police Constable on the basis of the said waiting list.

... ..."

It is stated in paragraph 7 of the affidavit-in-reply as under :-

" ... ...

7. The averments pertaining to Shri Arvindbhai J. Barot who was selected in

June 1987 are irrelevant. It is submitted that Special C.A. No.8412 of 1988 was filed by some of the persons whose names were included in the waiting list wherein name of Shri A.J. Barot was included. It is submitted that in February, 1988, recruitment rules for appointment to the post of Police Constables were changed and therefore certain persons who could have been appointed as Police Constables as per old recruitment rules were not appointed after changed recruitment rules. The Hon'ble Court had therefore given a direction in Special C.A. No.8412 of 1988 that the persons who were included in the waiting list should have been appointed as Police Constables and subsequent change in the recruitment rules should have been ignored, by the Government. It is therefore submitted that under the directions given by this Hon'ble Court certain persons were appointed even after the completion of one year of preparation of the waiting list because of the peculiar facts. Cases of the petitioners are not covered by the ratio of judgment delivered in Special C.A. No. 8412 of 1988 and therefore reference to the said case is absolutely irrelevant and therefore, I do not deal with them.

... ..."

Mr.Pujara, learned Advocate for the petitioners, strenuously argued that if the Department had continued the waiting list prepared in 1987 in favour of Mr.Barot, there is no reason for discriminating the present petitioners and the same treatment should have been given to the petitioners by operating the waiting list. It was further argued by Mr.Pujara that if the waiting list of 1989 had been continued or operated, the petitioners would have got the chance of appointment, as, according to Mr.Pujara, waiting list of 1987 was operated as late as in the year 1989. In his submission, therefore, the question of lapsing of the waiting list after one year does not arise.

It is required to be noted that as per the Circular dated 5.6.1982, the life of the select list is one year or till the new select list is prepared,

whichever is earlier. The said Circular is placed on record along with the reply, at Annexure `I', page 14. On completion of the period of one year, therefore, the life of the aforesaid select list / waiting list came to an end. Apart from the said fact, it is a well-settled position in law that the candidate in waiting list has got no right to the post. The petitioners who are admittedly in the waiting list, therefore, cannot claim, as of right, appointment on the post in question on the ground that they were in the waiting list and they were entitled to be appointed. It is not in dispute that all the candidates who were in the select list were already appointed and so far as question about appointing one Mr.Barot, and such other candidates, is concerned, as stated earlier, explanation has been given in paragraph 7 of the reply.

Considering the facts and circumstances of the case, therefore, I am of the opinion that the present petitioners, who were in the Waiting List, cannot have any right for the post at all and apart from the said fact, the aforesaid select list / waiting list came to an end on completion of the period one year from the date of its preparation. On the aforesaid grounds, the petitioners cannot claim any relief and it is not open for this Court, therefore, to direct the respondents to continue the said waiting list for the purpose of giving appointment to the candidates on the post of Armed Police Constables by operating the said Waiting List. Even otherwise, candidates on the waiting list cannot claim any right to a post as a matter of right. In that view of the matter, I do not find any substance in this petition and the same is devoid of any merits. Petition, therefore, deserves to be dismissed and it is accordingly dismissed. Rule is discharged. Interim relief, if any, shall stand vacated, with no order as to costs.

Mr.Pujara has requested for continuing the interim relief. However, in the facts and circumstances of the case as well as considering the fact that the law is very well settled that the candidates on the waiting list cannot have any right to the post, the prayer for continuing the interim relief cannot be granted and the said prayer is accordingly rejected.

(P.B. Majmudar, J.)

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(apj)